

Service Associates, Inc.
651 Solomon Jones Road
Post Office Box 329
Cedar Mountain, North Carolina 28718
800.396.99500 - 828.221.0602 FAX - ttraywick@serviceassoc.com

September 12, 2006

Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Room TW-A325
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

FILED/ACCEPTED
NOV 6 - 2006
Federal Communications Commission
Office of the Secretary

CC Docket No. 02-06

Re: Request for Review of
USAC-SLD Appeal Denied
FCC Form 471 Application Number 449171 FRN 1244443

To whom it may concern:

This Request for Review is filed on behalf of the applicant. My contact information is as follows:

Tom Traywick, Compliance Analyst
Service Associates, Inc.
651 Solomon Jones Road
Post Office Box 329
Cedar Mountain, NC 28718-0329
ttraywick@serviceassoc.com
800.396.9950
828.221.0602 FAX

Applicant Gloria McFadden, Director of Technology
Contact: Florence County School District 3
125 South Blanding Street
Lake City, SC 29560
flo3@serviceassoc.com
(843) 374-8652 x1114

No. of Copies rec'd
LIST ABOVE

012

Service Associates, Inc. is an E-rate support services company
providing services exclusively to E-rate applicants.

This Request for Review requests further consideration of the following USAC-SLD decision:

| | |
|---|-----------------------------------|
| Administrator's Decision on Appeal – Funding Year 2005 - 2006 | |
| Date of Letter | August 23, 2006 |
| Applicant | Florence County School District 3 |
| Billed Entity Number | 127203 |
| Form 471 Application Number | 449171 |
| Funding Request Number | 1244443 |

The **"Funding Commitment Decision"** in the May 5, 2006 Funding Commitment Decision Letter is: **"\$0.00 – Bidding Violation"**.

The **"Funding Commitment Decision Explanation"** given in the May 5, 2006 Funding Commitment Decision Letter is: **"Documentation provided demonstrates that price was not the primary factor in selecting this service provider's proposal."**

Grounds for Appeal

We appeal this decision on grounds that there was only one bid / price that was eligible to be considered by the District for this procurement, and that bid price happened to be the lowest. There was only one service provider that was eligible to be chosen under the District's own procurement regulations. The applicant complied with both USAC-SLD procurement procedures and District procurement procedures in this procurement, and there was only one service provider that could be selected under the circumstances.

Attachments

We have attached a copy of our June 23, 2006 Letter of Appeal to USAC-SLD.

We have attached a copy of the USAC-SLD Administrator's Decision on Appeal – Funding Year 2005 – 2006 dated August 23, 2006.

History

Our attached Letter of Appeal and the USAC-SLD Selective Review and PIA Review files detail a long and torturous process. In our SLD Appeal we stated that "in the rush to respond to Selective Review SR-2005-127203, unintentional and misleading clerical errors were made" that resulted in that response being "incomplete and unintentionally misleading". In so stating, we considered that we were requesting that SLD disregard that erroneous response and to decide based on the accurate information provided in the appeal instead. But SLD, in the Administrative Decision on Appeal, ignored our request and argued and decided the case on that exact "incomplete and unintentionally misleading information".

Discussion

A new FCC Form 470 must be filed for tariffed and month-to-month services for each funding year.

The applicant posted FCC Form 470 Number 422540000527025 on 12/21/2004 requesting tariffed and/or month-to-month telecommunications services, stating that there was not an RFP, and listing the services sought as "telephone, long distance, and broadband services ... for 10 eligible sites". Applicant did not need quotes or bids from the incumbent service providers because their monthly bills for service documented their pricing. Applicant received one quote from BellSouth for Long Distance Service. For good reason, applicant continued with the incumbent telephone service provider rather than to "unbundle" long distance service and award to BellSouth.

In the rush to meet the deadline for response to Selective Review SR-2005-127203, unintentional clerical errors were made that resulted in the response descriptive language for this FRN 1244443 being incomplete and unintentionally misleading, as follows:

Non contracted Month to Month services. No RFP. One bid response received. See attached Exhibit I-3-A BellSouth Bid Response. Presently the District does not have administrative staff sufficient to manage a change of telephone service carriers. It is logistically impossible for the District to change long distance service providers effective July 1, 2005. Therefore the district is continuing with the incumbent service provider until such time as a change in the phone systems can be managed effectively.

While preparing responses to follow-up Selective Review questions, on January 21, 2006 the applicant wrote a letter (copy attached) to John Januszaris requesting correction of an error in the initial Selective Review Response by changing the language above to the following language:

This FRN represents both the applicant's local telephone service (Tariffed) and long distance telephone service (Non contracted Month to Month). No RFP. One bid response was received for Long Distance only. See attached Exhibit I-3-A BellSouth Bid Response. The prices proposed in the Long Distance quote were higher than those being paid Farmers Telephone, and District procurement procedures require 3 quotes to select a vendor. Consequently, the District decided to withdraw / cancel the Long Distance procurement initiative and the district is continuing with Farmers Telephone for all telephone service.

One bid response was received from a potential new service provider for Long Distance unbundled, which was not requested unbundled in the referenced Form 470. Also, after receiving the quote from BellSouth, it was determined by the District that although BellSouth could provide the proposed long distance service in the Verizon ILEC geographic area of the District, they could not provide the proposed long distance service in the much larger Farmers Telephone ILEC geographic area of the District.

The prices proposed by BellSouth in the Long Distance bid response were higher than those being paid the incumbent Farmers Telephone. District procurement regulations require 3 quotes to select / change a vendor. Including the better pricing shown in the monthly bills of the incumbent service provider, the District possessed bids/quotes/pricing from only two service providers. Consequently, the District decided to withdraw / cancel the Long Distance procurement and the district is continuing with Farmers Telephone for all telephone service.

Conclusion

For this FRN the District strictly followed their procurement regulations and also chose the most cost effective and administratively manageable course of action available. The District does not see the relevance of SLD's **"price was not the primary factor"** argument because the vendor chosen was the only possible choice, the price of the chosen vendor was the lowest, and the price was cost effective. To do otherwise would have been in violation of the District's own procurement policies. The Funding Commitment Decision Explanation given by SLD is irrelevant in these circumstances.

We believe that the continued denial of funding for FRN 1244443 is a result of mutual miscommunications and we respectfully request that this condition be corrected. To do otherwise would contribute to unintended consequences of hardship and inequity for the students and teachers in this District.

We all thank you for your kind attention to this matter. Please contact me if you have any questions or need additional information.

Sincerely,
Service Associates, Inc.



Tom Traywick, Jr.
Senior Compliance Analyst

Attachments as listed above



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2005-2006

August 23, 2006

Tom Traywick
Service Associates, Inc.
651 Solomon Jones Road
P.O. Box 329
Cedar Mountain, NC 28718-0329

Re: Applicant Name: FLORENCE COUNTY SCHOOL DIST 3
Billed Entity Number: 127203
Form 471 Application Number: 449171
Funding Request Number(s): 1244443
Your Correspondence Dated: June 23, 2006

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2005 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1244443
Decision on Appeal: Denied
Explanation:

- On appeal, you seek reversal of the SLD's decision to deny the above listed funding request based on a determination that price was not the primary factor of consideration in the selection of the service provider. You assert that the district not only complied with their procurement procedures but also complied with USAC's procurement rules as well. You maintain that only one bid was received for long distance services in response to the posted Form 470. You explain that the district procurement regulations require three quotes to justify a change in provider of services. Since the district only possessed bids/quotes/pricing from two service providers, the district abandoned the procurement process and continued doing business with the incumbent service provider (Farmers Telephone Cooperative, Inc.).

- During the course of PIA review, the applicant, Florence County School Dist 3, was contacted and asked to provide documentation explaining its vendor selection process. USAC thoroughly reviewed the documentation (e-mail submitted January 21, 2006) and determined that, based on the documentation provided, it was clear that the district violated this support mechanism competitive bidding rules. The Program rules require schools and libraries to carefully consider all bids submitted and must select the most cost-effective offering with price being the primary factor. This rule applies in addition to state and local competitive bidding requirements. The record in this case indicates that Florence County School Dist 3's own procurement procedures took precedence over the above mentioned Program rules. Since the district did not consider the bid submitted by BellSouth in response to the FCC Form 470 requesting competitive bids for the services for which discounts are sought, the funding request is not in compliance with program competitive bidding rules. Consequently, your appeal is denied.
- FCC rules require that applicants select the most cost-effective services offering with price being the primary factor. 47 C.F.R. § 54.511(a). Applicants may take other factors into consideration, but in selecting the winning bid, price must be given more weight than any other single factor. 47 C.F.R. § 54.511(a); *Request for Review by Ysleta Independent School District, et. al., Federal State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45, 97-21, Order, FCC 03-313 ¶ 50 (rel. Dec. 8, 2003). Ineligible products and services may not be factored into the cost-effective evaluation. See Common Carrier Bureau Reiterates Services Eligible for Discounts to Schools and Libraries, CC Docket No. 96-45, *Public Notice*, 13 FCC Rcd. 16,570, DA 98-1110 (rel. Jun. 11, 1998).

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either USAC or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

cc: Tom Traywick

Tom Traywick
Service Associates, Inc.
651 Solomon Jones Road
P.O. Box 329
Cedar Mountain, NC 28718-0329

Billed Entity Number: 127203
Form 471 Application Number: 449171
Form 486 Application Number:

Service Associates, Inc.

651 Solomon Jones Road
Post Office Box 329
Cedar Mountain, North Carolina 28718
800.396.9950 - 828.221.0602 FAX
ttraywick@serviceassoc.com

June 23, 2006

Letter of Appeal
Schools and Libraries Division
Box 125 - Correspondence Unit
80 South Jefferson Road
Whippany, NJ 07981

Re: Appeal of funding decision for Form 471 Application Number 449171 FRN 1244443.

To whom it may concern:

This appeal is being filed on behalf of the applicant. I am the Block 1 contact person for the applicant. My contact information is as follows:

Tom Traywick
Service Associates, Inc.
651 Solomon Jones Road
Post Office Box 329
Cedar Mountain, NC 28718-0329
ttraywick@serviceassoc.com
800.396.9950
828.221.0602 FAX

Applicant Gloria McFadden, Director of Technology
Contact: Florence County School District 3
125 South Blanding Street
Lake City, SC 29560
flo3@serviceassoc.com
843-374-8652 x1114

This appeal letter requests that the SLD reverse the denial of funding of the FRN.

| | |
|-------------------|---|
| Regarding: | Funding Commitment Decision Letter: |
| | Date of Letter May 5, 2006 |
| | Applicant Florence County School District 3 |
| | Billed Entity Number 127203 |
| | Form 471 Application Number 449171 |
| | Funding Request Number 1244443 |

The Funding Commitment Decision given in the FCDL is: "\$0.00 - Bidding Violation"

The "Funding Commitment Decision Explanation" given in the FCDL is: "Documentation provided demonstrates that price was not the primary factor in selecting this service provider's proposal".

Service Associates, Inc. is an E-rate support services company providing services exclusively to E-rate applicants

Grounds for Appeal

We appeal this decision on the grounds that the applicant complied with both USAC-SLD procurement procedures and District procurement procedures in this procurement, and that there was only one service provider that could be selected under the circumstances.

Discussion

A new FCC Form 470 must be filed for tariffed and month-to-month services for each funding year.

The applicant posted FCC Form 470 Number 422540000527025 on 12/21/2004 requesting tariffed and/or month-to-month telecommunications services, stating that there was not an RFP, and listing the services sought as "telephone, long distance, and broadband services ... for 10 eligible sites". Applicant did not need quotes or bids from the incumbent service providers because their monthly bills for service documented their pricing. Applicant received one quote from BellSouth for Long Distance Service. For good reason, applicant continued with the incumbent telephone service provider rather than to "unbundle" long distance service and award to BellSouth.

In the rush to meet the deadline for response to Selective Review SR-2005-127203, unintentional clerical errors were made that resulted in the response descriptive language for this FRN 1244443 being incomplete and unintentionally misleading, as follows:

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The District received only one quote from a potential new service provider for the long distance services requested in the referenced Form 470. Including the better pricing of the incumbent service provider, the District possessed bids/quotes/pricing from only two service providers.

District procurement regulations require three quotes in order to select/change vendors. For that reason the District abandoned the procurement and continued to do business with the incumbent service provider.

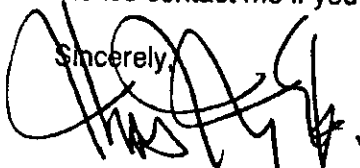
Also, after receiving the quote from BellSouth, it was determined by the District that although BellSouth could provide the long distance service in the Verizon ILEC geographic area of the District, they could not provide the long distance service in the much larger Farmers Telephone ILEC geographic area of the District.

Closing

We respectfully request that this decision be reversed and that **Form 471 Application Number 449171 FRN 1244443** be funded.

The applicant, the service provider and I all thank you for your kind attention to this matter. Please contact me if you have any questions or need additional information.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tom Traywick, Jr.', is written over the word 'Sincerely,'.

Tom Traywick, Jr.
Service Associates, Inc.

Attachment: January 21, 2006 Letter to John Januszanis

Service Associates, Inc.
P.O. Box 329
651 Solomon Jones Road
Cedar Mountain, North Carolina 28718
800.396.9950 Phone – 828.221.0602 FAX – 828.553.9366 Mobile
ttraywick@serviceassoc.com

January 21, 2006

John Januszanis
PIA Selective Review
USAC – Schools & Libraries Division
80 South Jefferson Road
Whippany, NJ 07981

Re: CASE # SR-2005-127203
Applicant Request for Error Correction

Mr. Januszanis,

In doing the research and analysis that was necessary to respond to your followup request, I have discovered an error that was made in the "heat of battle" during the summer and early fall while I was practically simultaneously responding to 14 different Selective Reviews.

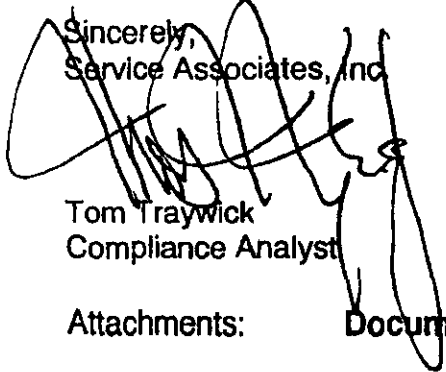
I have attached a corrected document catalog. The information entered in Document Catalog FLO3 012105 contains corrected information for FRN 1244443. None of the documents contained on the response CD change.

Please excuse the inconvenience.

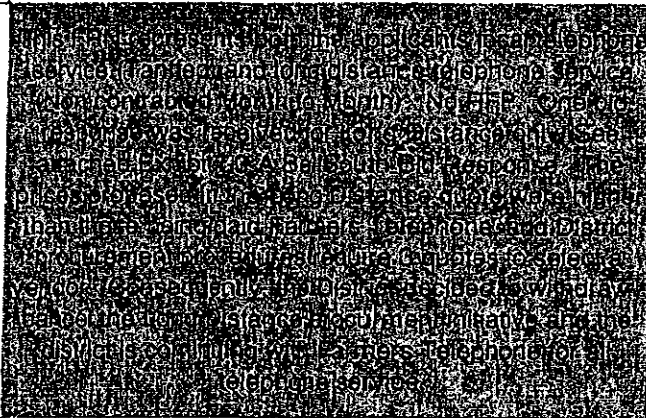
If you have further questions please contact me directly.

Thank you for your assistance.

Sincerely,
Service Associates, Inc.


Tom Traywick
Compliance Analyst

Attachments: **Document Catalog FLO3 012105**

| 1 catl ber | FRN | 470 Application Number | Service Provider Legal Name | Service Category | Total Annual Cost | Funding Request | Supporting Documents |
|------------------|---------|---------------------------|--|---------------------|----------------------|--------------------|---|
| 34 | 1222224 | 300000000490399 | Conterra, LLC | TELCOMM SERVICES | 113628 | 102265.2 | See attached Exhibit I-1-A Conterra Agreement 040130 This contract is the product of a procurement process conducted and documented in a previous Funding Year (FY2004). |
| 34 | 1222225 | 460800000481876 | eChalk, L.L.C. | INTERNET ACCESS | 40897.5 | 36807.75 | See attached Exhibit I-1-B eChalk MSA 04-1764 See attached Exhibit I-1-C eChalk SO 04-1764-02B This contract is the product of a procurement process conducted and documented in a previous Funding Year (FY2004). |
| 1 | 1244443 | 422540000527025 | Farmers Telephone Cooperative, Inc. | TELCOMM SERVICES | 37143.72 | 33429.35 |  |
| 1 | 1244457 | 388160000444486 | Farmers Telephone Cooperative, Inc. | TELCOMM SERVICES | 16291.8 | 14662.62 | Non contracted Month to Month services. No RFP. No bid responses received. The district is continuing with the incumbent service provider. The establishing Form 470 listed in the Block 5 for this FRN is incorrect, as is the contract number. The correct establishing Form 470 for this FRN is Form 470 Number 422540000527025. |
| 1 | 1244467 | 422540000527025 | Verizon South Inc. | TELCOMM SERVICES | 2553.36 | 2298.02 | Non contracted tariffed month to month services. No RFP. No bid responses received. The district is continuing with the incumbent service provider. |

| 1 c a t i o n n u m b e r | FRN | 470 Application Number | Service Provider Legal Name | Service Category | Total Annual Cost | Funding Request | Supporting Documents |
|---|---------|---------------------------|---|--------------------------------|----------------------|---------------------|--|
| 08 | 1244497 | 131190000437534 | Diversified Computer Solutions, Inc. | INTERNAL CONNECTIONS MNT | 498520 | 448668 | See attached Exhibit I-1-D FCSD3-FY2003-001A DCS Contract extended 011205 This contract is the product of a procurement process conducted and documented in a previous Funding Year (FY2003). |
| 08 | 1284011 | 329740000469358 | Novell, Inc. | INTERNAL CONNECTIONS MNT | 9746.1 | 8771.49 | The services for this FRN are procured through South Carolina State Master Contract No.05-S6610 which can be found at http://www.state.sc.us/cio/itmo/contract/osp/Software/Novell/novellindex.html |
| 08 | 1284021 | 228790000454613 | Diversified Computer Solutions, Inc. | INTERNAL CONNECTIONS MNT | 30732.1 | 27658.89 | The services for this FRN are procured through South Carolina State Master Contract No.04-S6261-A10286 which can be found at http://cio.state.sc.us/itmo/contract/nsp/nthardware/nt-cisco.htm See attached Exhibit I-4-A Cisco DCS Vendor Selection |
| | | | | | | | |
| | | | Total | | \$749,512.58 | \$674,561.32 | |
| | | | | | | | |

| 1 cati ber | FRN | 470 Application Number | Service Provider Legal Name | Service Category | Total Annual Cost | Funding Request | Supporting Documents |
|------------------|-----|--|--------------------------------|------------------|----------------------|--------------------|---|
| | | Other Documents Requested | | | | | Document Name on CD |
| | | Document Catalog (this document) | | | | | Document Catalog LeeCSD |
| | | Cover Letter | | | | | Cover Letter |
| | | Audited Financial Report for the 12 months ended 6/30/2004 | | | | | Exhibit A Audited Financials 06302004 |
| | | Approved Budget | | | | | Exhibit B Approved Budget |
| | | Consulting Agreement | | | | | Exhibit I-5 Consulting Agreement LeeCSD |
| | | Correspondence | | | | | Exhibit I-6 Correspondence |
| | | Item 25 SRIR Response - Pages 1 - 4 | | | | | Exhibit II-1 SRIR Response Pages 1-4 |
| | | Technology Plan | | | | | Exhibit II-2 Technology Plan |
| | | SRIR Page 13 | | | | | Exhibit II-3 SRIR Page 13 |
| | | Letter of Agency | | | | | Exhibit II-4 Letter of Agency LeeCSD |
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